Supreme Court, U. S.
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In The

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1488

CHARLES M. ALBRIGHT, Administrator of the Estate of CHARLES ALBRIGHT, deceased, Petitioner,

v.

R. J. REYNOLDS TOBACCO COMPANY, a corporation, Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for The Third Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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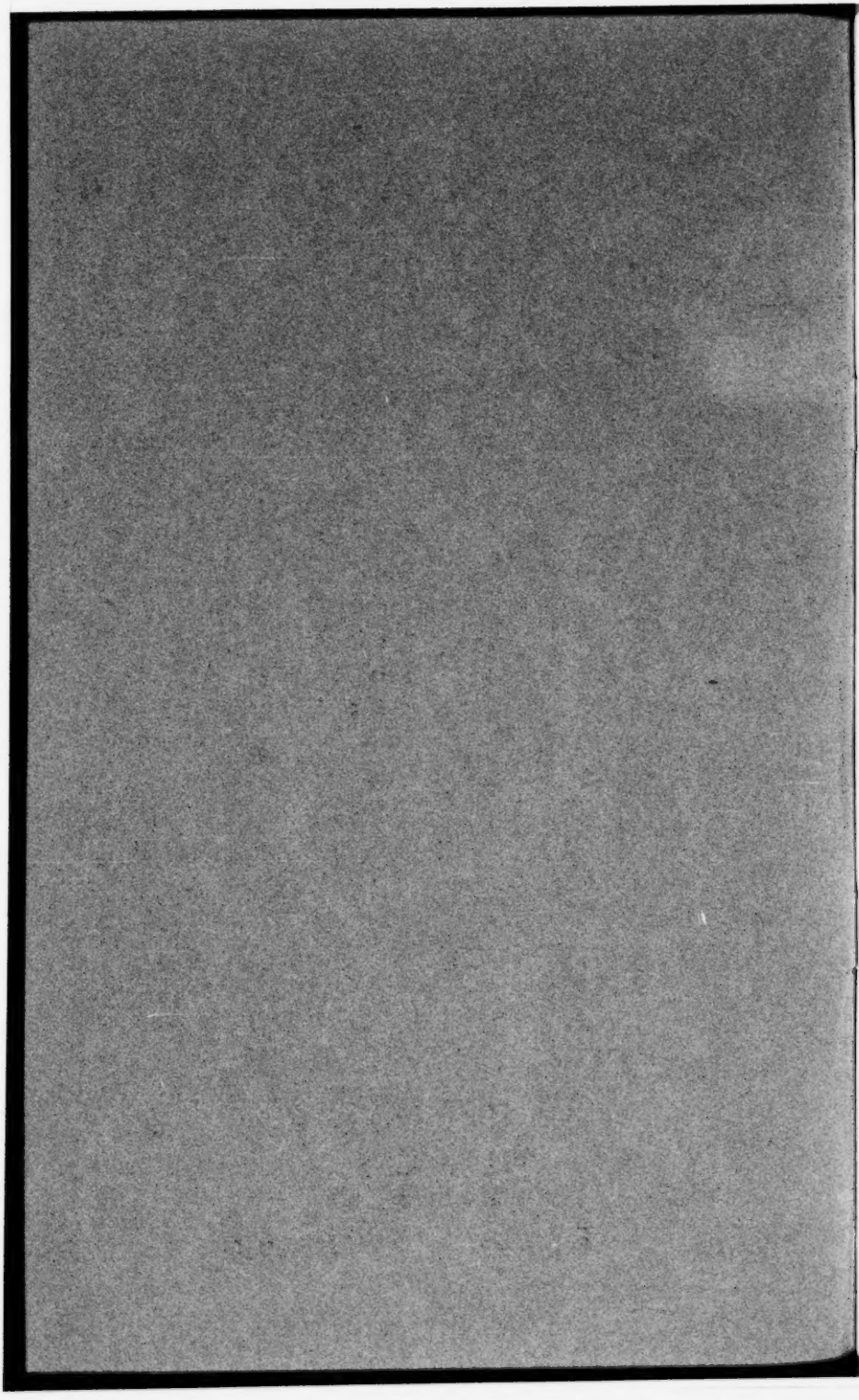

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1433

CHARLES M. ALBRIGHT, Administrator of the Estate of CHARLES ALBRIGHT, deceased, Petitioner,

v.

R. J. REYNOLDS TOBACCO COMPANY, a corporation, Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for The Third Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

COUNTER-STATEMENT OF JURISDICTION

These suits between citizens of different states, in which Petitioner claimed a sum in each in excess of $10,000, exclusive of interest and costs, were originally instituted in the Court of Common Pleas of Allegheny County, Pennsylvania and were removed to the United States District Court for the Western District of Pennsylvania by Respondent (hereinafter sometimes "Reynolds") pursuant to 28 U.S.C. §1441. Petitioner did not appeal from an adverse decision of summary judgment in the District Court to the United States Court of Appeals for the Third Circuit, 28 U.S.C. §1291, but claimed that the District Court committed error by not remanding the cases to State Court. Petitioner now asks this Court to review this case through the exercise of its *certiorari* power, 28 U.S.C. §1254(1). Reynolds denies that the issuance of a writ of *certiorari* is appropriate in this case and urges the Court to deny Petitioner's request.

COUNTER-STATEMENT OF THE ISSUES

1. Was it proper for the District Court to refuse to remand two cases commenced in the Court of Common Pleas of Allegheny County, Pennsylvania and removed to the United States District Court for the Western District of Pennsylvania pursuant to 28 U.S.C. §1441 where diversity of citizenship between the parties exists and where plaintiff, who admitted in the District Court and Court of Appeals that removal was proper, alleged in the State Court proceedings prior to removal that each case involved an amount in controversy in excess of $10,000, exclusive of interest and costs?

2. Where plaintiff in a prior Petition for a writ of *certiorari* in a parallel original Federal Court case represented to this Honorable Court that the case involves an amount in excess of $10,000, exclusive of interest and costs, and within three months thereafter affirmatively makes the same claim in two State Court cases, may plaintiff defeat defendant's removal of the State Court cases, because in the parallel original Federal Court case on the eve of trial plaintiff had failed to come forward with sufficient evidence to permit a jury to find damages in an amount in excess of $10,000, exclusive of interest and costs?

COUNTER-STATEMENT OF THE CASE

This is the latest chapter in litigation that began in 1962. On December 14, 1961, the original plaintiff, Charles Albright, was injured in an accident in which his automobile struck an excavation. On July 5, 1962 he and his wife filed a negligence suit against the City of Pittsburgh (herein "City case") in a Pennsylvania State Court* (herein "State Court") seeking to recover for those injuries. Their lawyers in that case were the same lawyers who have represented them in all of the litigation hereinafter noted. In December, 1963, Mr. Albright discovered he was suffering from lung cancer. In July 1964, in answers to interrogatories in the City case, he included lung cancer among the consequences of his automobile accident.

On August 24, 1965, he commenced the instant two suits against Reynolds by filing petitions for writs of summons in trespass and assumpsit** in the same State Court where the negligence suit against the City was filed. (Joint Appendix 4a, 101-102a).*** However, as hereinafter noted, plaintiff filed no complaints, and

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*Court of Common Pleas of Allegheny County, Pennsylvania.

**In Pennsylvania, suit may be started by a praecipe without filing a complaint. Pa.R.Civ.P. 1007. Because in 1965 the Pennsylvania Rules of Civil Procedure did not permit the joinder of causes of action in trespass and assumpsit, separate suits were filed and separate writs were issued in each suit. This practice has since been changed and such joinder is now permissible. *See,* Pa.R.Civ.P. 1020(d).

***"Joint Appendix ...." refers to the Joint Appendix filed by the parties hereto in this matter in the United States Court of Appeals for the Third Circuit, Nos. 75-1606, 75-1607, 75-2188 and 75-2189.

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process in these two suits was not served on Reynolds until May 22, 1974, some nine years later.

On October 27, 1965, with the City case and the two instant suits (without complaints) against Reynolds pending in the State Court, Petitioner sued Reynolds in the United States District Court for the Western District of Pennsylvania (hereinafter referred to as "Original Federal Court case").* In that case he filed a complaint charging that the same lung cancer had been caused by smoking cigarettes made by Reynolds. Extensive discovery and other proceedings subsequently took place in that case.

On November 13, 1965, Mr. Albright died and the litigation has been carried on first by his wife Mary Albright until her death and then by his son, Charles M. Albright, as administratrix and administrator, respectively, of his estate. All are referred to hereinafter as either "Petitioner" or "Plaintiff".

On May 22, 1967, Petitioner revived the writs in the State Court in the instant two suits against Reynolds by filing praecipes to reissue the writs of summons. Again, Petitioner filed no complaints and made no service of process. (Joint Appendix 5a, 101-102a).

On December 22, 1967—with the City case and the two instant cases still pending in the State Court—the same attorneys who represent Petitioner here, pursuant to a settlement reached at Court-supervised

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*This case was the subject of an earlier Petition by Petitioner herein for a writ of *certiorari* which was denied by this Court on April 15, 1974 (Calendar No. 73-1261, October Term, 1973) at 416 U.S. 951.

conciliations for which a consideration was paid, and without any reservation, marked the City case docket "settled and discontinued", and signed it. (Joint Appendix 13-14a).

On July 28, 1972, the District Court set the Original Federal Court case down for a pretrial conference on August 15, 1972 to prepare the case for trial and thereafter established various dates for compliance with the Court's pretrial rules. Pursuant thereto, the parties filed pretrial narratives setting forth the evidence each would offer at trial, including evidence as to damages. On the basis of the City case settlement Reynolds then moved on August 29, 1972 for summary judgment on the ground that the settlement and discontinuance of the City case precluded the Original Federal Court case in the District Court. In addition, Reynolds moved to dismiss the complaint because Petitioner's counsel had failed to set forth evidence in his pretrial narrative statements, supporting affidavits, or other material which, if presented at trial, would be sufficient to permit the jury to find damages equal to or exceeding the minimum jurisdictional amount. Thus, Reynolds did not assert in the Original Federal Court case that Petitioner had made a claim for less than $10,000 but rather that Petitioner failed to come forward with sufficient evidence to establish the jurisdictional amount requirement of 28 U.S.C. §1332(a).

After those motions were made, the District Court afforded Petitioner further opportunities to respond to the motions by presenting additional evidence without limitation. However, Petitioner failed to do so, and on October 23, 1972, the District Court entered judgment for Respondent on the grounds of (a) accord

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and satisfaction based on the settlement in the City case, and (b) that Petitioner's counsel failed, in the pretrial narratives, and other affidavits and material, to set forth sufficient evidence to meet the statutory $10,000 limitation. *Albright v. R. J. Reynolds Tobacco Company,* 350 F.Supp. 341 (W.D. Pa. 1972), *aff'd,* 485 F.2d 678 (3rd Cir. 1973), *mod.* (3d Cir. No. 72-2105, November 23, 1973) (Addendum, p. 1b) *cert. denied* 416 U.S. 951 (1974).

On October 25, 1973, the Court of Appeals for the Third Circuit affirmed, per curiam, that judgment of the District Court. Later, on November 23, 1973, the Third Circuit amended its Order to state that it based its affirmance on the ground that Petitioner's claim failed to comply with the $10.000 jurisdictional requirement. (The November 23, 1973 Order is set forth in the Addendum hereto at p. 1b).

Petitioner then applied to this Honorable Court for a writ of *certiorari,* which Petition was docketed on February 15, 1974 at No. 73-1261, October Term, 1973. At page 8 of that Petition, Petitioner herein stated that he was entitled to keep a verdict in excess of $10,000 exclusive of interest and costs. Furthermore, at page 3 of the aforesaid Petition, Petitioner raised the issue of whether the Federal Court should have remanded the Original Federal Court case to the State Court for lack of jurisdictional amount. This Honorable Court denied the Petition on April 15, 1974 at 416 U.S. 951.

After this Honorable Court denied Petitioner's Petition for a writ of *certiorari* in the Original Federal Court case, Petitioner—almost seven years after the last previous reissuance of the writs in the State Court in the instant two cases—caused the writs to be re-

issued again by filing two praecipes on May 15, 1974 *which expressly and affirmatively stated,* for the first time in those actions, that the amount in controversy in each case exceeded "TEN THOUSAND ($10,000.00) DOLLARS exclusive of interest and costs". (Joint Appendix 10a, 107-108a). The Pennsylvania Rules of Civil Procedure and the local rules of the Court of Common Pleas of Allegheny County afforded to Petitioner the option of stating a claim: (a) in an amount less than $3,000; (b) in an amount in excess of $3,000 and less than $10,000; or (c) in the trespass action, in an amount in excess of $10,000.* Petitioner unqualifiedly asserted in both praecipes that the claims were in excess of $10,000, exclusive of interest and costs. Also, for the first time, Petitioner gave instructions to the Allegheny County Sheriff to make service of process, and the writs were served on Reynolds on May 22, 1974. (Joint Appendix 103a).

It is noteworthy that Pennsylvania Rule of Civil Procedure 1044 (relating to actions in trespass) does not require the statement "exclusive of interest and costs", whereas that precise language is contained in 28 U.S.C. §1332(a), which relates to the diversity jurisdiction of District Courts of the United States. Thus, the Petitioner was using Federal diversity jurisdiction language.

Thereafter, within the time prescribed by 28 U.S.C. §1446, Reynolds, on June 20, 1974, removed the instant two cases to the District Court on the basis of diversity of citizenship and the amount in controversy claimed by

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**See*, Allegheny County Common Pleas Court Local Rule 1019*2 and Pa.R.Civ.P. 1044(b), (c) set forth in the Addendum herein.

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Petitioner. (Joint Appendix 11-16a). The cases were then assigned, in accordance with the rules of the District Court, to Judge Weber as the Judge most familiar with this litigation, and the cases were consolidated on August 6, 1974 under Civil Action No. 74-607.

On June 24, 1974, Petitioner evidently sought to nullify the effect of his express statement as to the amount in controversy by filing complaints in the State Court—although the cases had already been removed from that Court—requesting judgment in each case for a sum in excess of $3,000. (Joint Appendix 21-33a, 86-95a). There was, however, no statement that the amount claimed was less than $10,000. At the same time, Petitioner moved in the District Court below to remand the cases to the State Court. (Joint Appendix 96-99a). Petitioner told the District Court that the amount in controversy did not exceed $10,000. (Joint Appendix 42-43a). Petitioner did not, however, assert the impropriety of the removal, but contended only that the cases should be remanded. (Joint Appendix 46a, 66a). Indeed, he even admitted that the cases were not "improperly removed." (Joint Appendix 46a, 66a).

On July 3, 1974, Reynolds moved for summary judgment (Joint Appendix 2a) on the ground that the actions were barred, *inter alia,* by the applicable statute of limitations, prior satisfaction and *res judicata.*

Subsequently, Petitioner's motions to remand were denied, and Judge Weber granted summary judgment of dismissal based on the applicable statute of limitations, since Petitioner had failed to reissue the State Court writs for seven years, a period beyond the applicable

statute of limitations. (Joint Appendix 118-122a, 125-132a, 133a).*

Contrary to Petitioner's contention, this is not a situation where Judge Weber reversed himself or was inconsistent. As Judge Weber expressly noted in his August 6, 1974 Opinion:

> ". . . Failing to present adequate evidence in support of the minimal jurisdictional requirement the plaintiff's complaint [in the Original Federal Court case] was dismissed for want of jurisdiction." (Appendix to Petitioner's Petition, p. A26; Joint Appendix 120a).
>
> * * * * *
>
> "We do not believe that the judgment of dismissal for want of jurisdiction [in the Original

---

*Petitioner's failure to make service of process on Reynolds at this stage of the proceedings in the cases and/or to again revive the writs within prescribed periods of time permitted Reynolds to raise as a defense that the actions were time-barred when Reynolds was finally served on May 22, 1974. As noted by the District Court, Petitioner admitted that, on the facts in these cases and applicable law, the cases were time-barred but contended the rule should not be applied for various reasons. (Appendix to Petitioner's Petition, p. A30; Joint Appendix 126a). As was noted by the District Court, the applicable statute of limitations on the causes of action covered by the praecipe in each case is two years for the trespass action, 12 Purdon's Stat. §34, and four years for the assumpsit action under the Pennsylvania Uniform Commercial Code, 12A Purdon's Stat. §2-275. (Appendix to Petitioner's Brief, p. A30; Joint Appendix 125-126a). In the Court of Appeals, Petitioner did not raise as an issue the correctness of the District Court's Order that the cases were time-barred as the Court of Appeals noted when considering the equities of Petitioner's case. (Appendix to Petitioner's Petition, p. A10).

> Federal Court case] operates as a bar to a subsequent action." (Appendix to Petitioner's Petition, p. A26; Joint Appendix 120a).

Judge Weber, in his Opinion of March 6, 1975, also noted the difference between the treatment of the jurisdictional amount question in cases originally brought in the Federal Court (as was the case in the Original Federal Court case) and those removed to that Court (as in the instant cases). Citing and quoting from *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 82 L.Ed 845, 58 S. Ct. 586 (1938), Judge Weber, in his March 6, 1975 Opinion, stated:

> "In those cases originally brought in federal court the plaintiff chooses his forum, he knows or should know the value of his claim, his good faith is subject to challenge to the face of his pleadings and to the evidence produced at trial.
>
> > 'A different situation is presented in the case of a suit instituted in a state court and thence removed. There is strong presumption that the plaintiff has not claimed a large amount in order to confer jurisdiction on a federal court or that the parties have colluded to that end. For if such were the purpose suit would not have been instituted in the first instance in the state but in the Federal court. It is highly unlikely that the parties would pursue this roundabout and troublesome method to get into the Federal court by removal when by the same device the suit could be instituted in that court. Moreover, the status of the case as disclosed by the plaintiff's complaint is controlling in the case of a removal, since the defendant must file

> his petition before the time for answer or forever lose his right to remove. Of course, if, upon the face of the complaint, it is obvious that the suit cannot involve the necessary amount, removal will be futile and remand will follow. But, the fact that it appears from the face of the complaint that the defendant has a valid defense, if asserted, to all or a portion of the claim, or the circumstance that the rulings of the district court after removal reduce the amount recoverable below the jurisdictional requirement, will not justify remand. And though, as here, the plaintiff after removal, by stipulation, by affidavit, or by amendment of his pleadings reduces the claim before [sic-below] the requisite amount, this does not deprive the district court of jurisdiction.' (pp. 290, 291-292, footnotes omitted)." (Appendix to Petitioner's Petition, p.A34; Joint Appendix 130a).

Judge Weber found this precedent to be controlling here.

Thus, jurisdiction in the present case was specifically found to rest upon Petitioner's express written claim that the instant cases had a value "in excess of TEN THOUSAND ($10,000) DOLLARS exclusive of interest and costs." (Joint Appendix 10a, 107-108a).

On appeal to the United States Court of Appeals for the Third Circuit in the instant two cases, Petitioner did not contest that part of the District Court's Opinion and Order granting Reynolds' motion for summary judgment on the basis that they were time-barred, but merely appealed from the denial of the motions to remand. Petitioner did not, however, assert the impropriety of the removal but instead admitted that removal was

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proper. (*See* p. 2 of Petitioner's Reply Brief submitted in the instant cases in the Court of Appeals). On February 13, 1976, the Third Circuit affirmed the District Court in a 2-1 decision. (Appendix to Petitioner's Brief, pp. A1-A20). Petitioner's motion for rehearing *en banc* was denied by the Third Circuit on March 15, 1976. (Appendix to Petitioner's Petition, pp. A23-A24).

ARGUMENT

I.

The Cases Were Properly Removed And Petitioner Has Admitted That; There Is No Special Or Important Reason For Review And, Accordingly, The Petition For A Writ of Certiorari Should Be Denied.

From a procedural point of view, it is important to note that there is here no question of conflict between the Circuits or of conflict with any decision of this Honorable Court. The rule of law established by this Honorable Court was clearly followed by the Court of Appeals for the Third Circuit. It is merely the application of an established rule to a specific set of facts.

The instant cases do not present any "special and important reasons" justifying the issuance of a writ of *certiorari* by this Court. Petitioner does not charge that the action of the District Court or the Circuit Court herein conflicts with the decisions of other Circuit Courts. Likewise, Petitioner does not claim that the action taken by the lower courts herein conflicts in any way with the statutory or case law of the Commonwealth of Pennsylvania. Petitioner does not even claim that the District Court's dismissal of these cases on summary judgment as barred by the applicable statute of limitations was erroneous, or that the State Court would have acted otherwise. Rather, Petitioner merely argues that the District Court erred in failing to remand these actions to the State Court. Reynolds respectfully submits that no issue justifying review by this Court exists and that the District Court acted properly in refusing to remand.

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II.

Petitioner Is Himself Responsible For The Removable Status Of These Cases.

If a "bad faith" exception exists to the rule of the *St. Paul Mercury Indemnity Co.* case, it is inapplicable here.

From a substantive point of view—and with respect to evaluations relative to good faith—it is highly significant that, at page 8 of Petitioner 's previous Petition for writ of *certiorari* docketed in this Honorable Court on *February 15, 1974* (No. 73-1261, October Term, 1973), the following was stated: "Claimant here is entitled to keep a verdict in excess of $10,000 exclusive of interest and costs." After that Petition was denied by this Honorable Court, the Petitioner in two praecipes filed on *May 15, 1974*—approximately 90 days later—again expressly, voluntarily and without necessity, affirmatively stated that in each case the amount in controversy exceeded $10,000, exclusive of interest and costs. (Joint Appendix 10a, 107-108a). In the first Petition for *certiorari,* Petitioner argued the question of remand and so was cognizant of the legal significance of the amount of his claims.

The first two sets of praecipes issued (in 1965 and 1967) had been silent on the amount of damages claimed and, in any event, were not served on Reynolds. (Joint Appendix 4-5a, 101-102a). The third set of praecipes were the first indication Reynolds had of the amount of damages Petitioner would attempt to prove in the State Court cases. As Reynolds had only 30 days under 28 U.S.C. §1446 within which to remove the cases or risk losing this right forever, Reynolds, in good faith, elected on the basis of Petitioner's assertions to act within the 30-day period and removed the suits to Federal Court.

Thereafter on June 24, 1974, Petitioner filed and served complaints containing a demand for damages in excess of $3,000 *but setting forth no maximum amount.* (Joint Appendix 21-33a, 86-95a).

As this Honorable Court stated in the *St. Paul Mercury Indemnity Co.* case, ". . . the status of the case as disclosed by the plaintiff's complaint is controlling in the case of a removal, since the defendant must file his petition before the time for answer or forever lose his right to remove. . . . the fact that it appears from the face of the complaint that the defendant has a valid defense, if asserted, to all or a portion of the claim, or the circumstance that the rulings of the district court after removal reduce the amount recoverable below the jurisdictional requirement, will not justify remand. And though, as here, the plaintiff after removal, by stipulation, by affidavit, or by amendment of his pleadings, reduces the claim below the requisite amount, this does not deprive the district court of jurisdiction." *St. Paul Mercury Indemnity Co. v. Red Cab Co., supra,* at 303 U.S. 291-292.

Thus, there is no question but that Petitioner's allegation of the amount in controversy placed upon Reynolds the burden of moving within 30 days, or having its right to remove absolutely barred by the statute.

It is also significant that even when the Petitioner on June 24, 1974 changed the demand to "in excess of $3,000" (Joint Appendix 21-33a, 86-95a), no statement was included that the amount in controversy was $10,000 or less. That left the door open for the plaintiff to claim more than $10,000, exclusive of interest and costs.

With respect to questions of good faith, it was not and is not realistic to believe that the Petitioner could in good faith represent to this Honorable Court on

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February 15, 1974, that "claimant here is entitled to keep a verdict in excess of $10,000, exclusive of interest and costs," and then within a matter of three months reduce its claim of the amount in controversy to $10,000 or less.

Significantly, Petitioner did not assert the impropriety of removal either in the District Court or in the Court of Appeals. Indeed, at page 2 of his Reply Brief in the Court of Appeals in the instant cases, Petitioner stated:

> "Appellant has never asserted that these civil actions were removed improperly from the state court to the federal court. Rather, Appellant has asserted all along that once removed to the federal court, a reason existed for remanding these claims to the state court where they were instituted to begin with."

In the District Court, he also admitted the propriety of removal but asked that the cases be remanded. (Joint Appendix 46a, 66a).

Thus, Petitioner, rather than Reynolds, was responsible for creating the removable status of these cases. In removing, Reynolds merely exercised the right granted it by statute, 28 U.S.C. §1441.

It merits Petitioner nothing to state that the cause of action in the instant cases was identical to the cause of action in the Original Federal Court case. Identity of the cause of action does not mean identity of proof of damages.

> "A dismissal for lack of jurisdiction, however, will not preclude a second suit between the same parties unless the same jurisdictional issue is again deci-

sive. Thus, if the jurisdictional defects that lead to the first dismissal either are cured or otherwise lose their controlling force, a second suit is no longer barred and the merits of the suit may be reached. *See, e.g.* Madden v. Perry, 264 F.2d 169 (7th Cir. 1959), cert. denied, 360 U.S. 931, 79 S. Ct. 1450, 3 L.Ed.2d 1544 (1959)."

Luker v. Nelson, 341 F. Supp. 111, 114-115 (N.D. Ill. 1972).

". . . jurisdictional dismissals do not bar further litigation of the cause of action when the subsequent complaint cures the jurisdictional defect. *Etten v. Lovell Manufacturing Company,* 225 F.2d 844, 846 (3rd Cir. 1955), cert. denied, 350 U.S. 966, 76 S. Ct. 435, 100 L.Ed. 839 (1956)."

Smith v. Pittsburgh Gage and Supply Co., 464 F.2d 870, 874 (3rd Cir. 1972)

As the Original Federal Court case was dismissed on the basis of Petitioner's failure to indicate ability to offer proof of damages in excess of $10,000, a jurisdictional defect, Petitioner could still bring a second suit on the same cause of action, and then cure the jurisdictional defect by claiming damages in excess of $10,000. At the time Petitioner's praecipes were filed on May 15, 1974, Reynolds had no reason to believe that Petitioner would deviate from his strong assertion to this Honorable Court relative to the amount in controversy. The only party who really knew what evidence Petitioner would offer to seek to support the value of his claim was Petitioner. If Petitioner knew that the amount in controversy was less than $10,000, he should not have made a statement to the contrary in the praecipes.

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Thus, the situation is left where Petitioner's Original Federal Court case was dismissed for failure to come forward with sufficient evidence in his pretrial narratives, supporting affidavits, or other material which, if presented at trial, might support a jury verdict of $10,000. Apparently feeling that he could offer proof to reach the "in excess of $10,000" requirement, Petitioner then claimed in the instant cases (on file in the State Court since 1965) that he would prove damages in excess of $10,000, and Reynolds then properly removed the cases to the District Court. Petitioner's subsequent efforts to oust the District Court of jurisdiction were legally insufficient.

In any event, the instant cases are without substantive merit because they are barred by the applicable statute of limitations, as so held by the District Court below and not contested by Petitioner on appeal, and by reason of Petitioner's recovery against the City of Pittsburgh for his lung cancer claim, as so held by the District Court in the Original Federal Court case. What was done by both the District Court and the Court of Appeals was to recognize and properly handle an attempt by Petitioner to defeat federal jurisdiction and to relitigate in the State Court a matter which had been fully disposed of in the Federal System after years of litigation.

CONCLUSION

After fourteen years of litigation in four cases involving either the City of Pittsburgh or Reynolds as defendants, nine complaints filed in that litigation, three District Court opinions on the lack of merit of the cases against Reynolds, two appeals, two petitions for rehearing *en banc,* and one petition for a writ of mandamus to the United States Court of Appeals for the Third Circuit, two petitions to this Honorable Court for a writ of *certiorari* and one for a writ of mandamus, numerous pre-trial and appellate briefs, one five hour pretrial conference in the Original Federal Court case, as well as many other conferences, hearings, and arguments in all four cases, all of which has required an enormous expenditure of the Courts' time and expense to the parties, the time is surely here to bring this litigation to a conclusion.

For the reasons set forth above, Defendant-Respondent, R. J. Reynolds Tobacco Company, respectfully requests that the Petition for a writ of *certiorari* be denied.

Respectfully submitted,

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ADDENDUM

ADDENDUM

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 72-2105

MARY ALBRIGHT, Administratrix of the Estate of Charles Albright,
Appellant,

v.

R. J. REYNOLDS TOBACCO COMPANY, a corporation,
Appellee.

Appeal from the Order Entered on the 24th Day of October, 1972, of the United States District Court for the Western District of Pennsylvania at Civil Action No. 65-1155

Submitted Under Third Circuit Rule 12(6)
August 8, 1973.

Before: VAN DUSEN, ADAMS and ROSENN, *Circuit Judges.*

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Order

It is ORDERED that the judgment order filed October 25, 1973, be amended as follows:

After the word "affirmed" on the second line of paragraph 2, the following language is to be added:

"on the ground that appellant's claim fails to comply with the jurisdictional amount requirement of 28 U.S.C. §1332."

BY THE COURT,
/s/ ARLIN M. ADAMS
Circuit Judge

Attest:
/s/ THOMAS F. QUINN, Clerk

Dated: Nov. 23, 1973

Addendum.

Allegheny County Common Pleas Court
Local Rule 1019*2

SMALL CLAIMS DIVISION

The following procedure shall govern Small Claims, which include appeals from justices of the peace and actions in assumpsit and trespass where the damages claimed, exclusive of interest, do not exceed the sum of $3,000.00.

(a) The complaint may be simplified to contain only the names and addresses of the parties, the form of action (assumpsit or trespass), a statement indicating concisely the nature and amount of the claim, the signature of the plaintiff or his attorney (Rule 1023), an endorsement (1025), a notice of hearing and a notice in triplicate of intention to appear as set forth in subparagraph (b) hereof.

(b) When the complaint is filed, a hearing date shall be set and all copies of the complaint to be served shall contain notice of such date in substantially the following form.

NOTICE OF HEARING

To the Defendant *Case No.* .....

A lawsuit has been entered against you. Attached is a copy of the suit papers. You are requested to appear for a hearing on this claim on ....., at ..... o'clock, in Room ....., Court House, Pittsburgh, Pennsylvania. IF YOU INTEND TO APPEAR at the hearing and defend against this claim, YOU MUST complete and detach two of the copies of the "Notice of Intention to Appear" at the bottom of this page. One completed copy of

the "Notice of Intention to Appear" must be mailed to the Prothonotary's Office, Room 504 Court House, Pittsburgh, Pennsylvania 15219 and the other completed copy must be mailed to (here insert the name and address of the plaintiff or the plaintiff's attorney), within 20 days from the date you received these papers. IF YOU DO NOT thus mail the "Notice of Intention to Appear", OR IF YOU properly mail it but DO NOT APPEAR at the above time and place for the hearing, A JUDGMENT FOR THE AMOUNT OF THE CLAIM MAY BE ENTERED AGAINST YOU.

.....

NOTICE OF INTENTION TO APPEAR

(in triplicate)

To the Plaintiff or the Plaintiff's attorney

Case Caption .....
Hearing date .....

I intend to appear at the hearing scheduled for the above date and defend against the claim made against me. I do not owe this claim for the following reasons:

.....

.....

I certify that I have mailed a copy of this Notice to the Plaintiff or the Plaintiff's attorney.

Date

Sign here: .....
Address: .....

.....

(c) The filed Notice of Intention to Appear shall be a sufficient answer to the complaint.

(d) a counterclaim which qualifies as a "small claim" as defined herein may be set forth in either the

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filed Notice of Intention to Appear or a separate pleading, by a statement indicating concisely the nature and amount of same. The counterclaim filed as a separate pleading shall be in substantially the same form as the complaint, without the Notice of Hearing or Notice of Intention to Appear.

(e) No reply to a counterclaim shall be required. If one is filed, it may be limited to a general denial.

(f) If the defendant files a counterclaim for an amount in excess of a small claim as defined herein, or if by amendment the claim of any party is increased above the maximum amount of a small claim, then:

(1) If the claim is less than $10,000.00, the action shall continue at the arbitration docket number; and

(2) If the value of the claim exceeds $10,000.00, upon application to the calendar control judge, the action shall be ordered transferred to the appearance docket.

(g) Additional defendants may be joined as in other actions.

(h) All preliminary objections, including demurrers, and other contested motions and petitions to be disposed of prior to the arbitration hearing shall be heard by the calendar control judge at 1:30 p.m. on the Friday following the filing thereof or as otherwise directed by the Court. No Preliminary Objections or other pretrial matters shall be filed less than ten (10) days prior to the arbitration hearing.

*(i) The provisions of Rules 212*I-XIII and 249*1 and 2 shall not apply to actions involving only small claims as defined herein.*

Addendum.

(j) Except as otherwise provided by order of the calendar control judge upon good cause shown, there shall be no discovery by deposition upon oral examination or written interrogatories under Rules 4005 and 4007 or right to serve upon an adverse party written requests for admissions under Rule 4014 in small claims proceedings.

(k) The prothonotary, on praecipe of the plaintiff, shall enter judgment against the defendant for failure to file a copy of the Notice of Intention to Appear within twenty (20) days from service thereof, with damages to be assessed in the manner provided by the rules.

(l) If any party fails to appear or present evidence at the scheduled hearing, an award shall be entered in favor of the opposing party or parties in the manner provided by the Arbitration Rules.

Amended March 16, 1973. Eff. May 1, 1973.

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Addendum.

Pennsylvania Rules of Civil Procedure

RULE 1044 *Pleading. Joinder of Causes of Action.*

Averments of Damages [in an action in trespass]

* * * *

(b) Any pleading demanding relief for unliquidated damages shall without claiming any specific sum, set forth only whether the amount is in excess of, or not in excess of $10,000.00.

(c) In counties having a county court or which have adopted rules governing compulsory arbitration the plaintiff shall in addition set out whether the amount claimed exceeds or does not exceed the jurisdictional amount of the county court and the jurisdictional amount requiring arbitration referral by local rule.*

Adopted June 25, 1946. Eff. Jan. 1, 1947. Amended Sept. 1, 1958. Eff. forthwith. Amended July 31, 1961. Eff. Sept. 1, 1961. Amended Nov. 29, 1963. Eff. Dec. 1, 1963.

*Subsection (c) was amended effective June 23, 1975.